

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 8**

**SUNRISE SENIOR LIVING, INC.**

**Employer**

**and**

**Case No. 8-RC-16609**

**UNITED FOOD AND COMMERCIAL WORKERS UNION,  
LOCAL 880, AFL-CIO, CLC**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (the Act), a hearing was held before a hearing officer of the National Labor Relations Board (the Board).

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.<sup>1</sup> I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

*All full-time and regular part-time service and maintenance employees, including dining services, housekeeping/maintenance, nursing assistants/care managers, the concierge and student-employee care managers employed at the Employer's 21600 Detroit Road, Rocky River, Ohio facility, but excluding the executive director, the health care coordinator, the maintenance coordinator, the resident care coordinator, the dining services coordinator, the director of community relations, the activities and volunteer coordinator, the administrative assistant, the wellness nurses, casual student-employee care managers and all confidential employees, all professional employees, guards and supervisors as defined in the Act*

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<sup>1</sup> The Parties filed post-hearing briefs, which have been carefully considered. Upon the entire record in this proceeding, the undersigned finds: the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and 2(6) and (7) of the Act.

Approximately 33 employees are in the unit found to be appropriate.

### **Introduction**

There are six job classifications at issue in this case. Specifically, whether the wellness nurses, the director of community relations, the activities and volunteer coordinator, the concierge, the administrative assistant and the student-employee care managers should be included in the unit found to be appropriate. The Petitioner contends that none of these classifications share a community of interest with the service and maintenance unit it has petitioned-for and, therefore, all six should be excluded from the unit. The Employer disagrees and submits that all of the disputed classifications have such a community of interest with the service and maintenance employees sought by the Petitioner so as to mandate their inclusion in the unit.

For the reasons described more fully below, I find that the wellness nurses, the administrative assistant, the director of community relations and the activities and volunteer coordinator do not share a community of interest with the service and maintenance employees and therefore are excluded from the unit. I also find that the student-employee care manager, Nicole Bing, is not a regular part-time employee and I therefore exclude her from the bargaining unit. Finally, I find that Student-employee Care Managers Leah Bing and Maggie Parks, and the concierge, share a sufficient community of interest with the service and maintenance employees and therefore are appropriately included in the unit.

### **The Legal Standard**

The Board has historically held that the unit sought by the petitioner is always a relevant consideration.<sup>2</sup> Nothing in the Act requires that the unit for bargaining be the only appropriate unit, or most appropriate unit. Rather, the Act requires only that the unit be appropriate. A union is not required to represent the most comprehensive or largest unit of employees of an employer unless “an appropriate unit compatible with that requested unit does not exist.”<sup>3</sup>

The determination of an appropriate unit in non-acute healthcare institutions is based on an empirical community of interest analysis.<sup>4</sup> Under that standard, the Board applies traditional community of interest factors, as well as any considerations arising from the rulemaking process with respect to health care institutions. Common factors examined in a community of interest analysis include degree of functional integration, common supervision, the nature of employee skills and functions, interchangeability and contact among employees, general working conditions and fringe benefits.<sup>5</sup>

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<sup>2</sup> Overnight Transportation Co., 314 NLRB 723 (1996).

<sup>3</sup> The Aerospace Corporation, 331 NLRB 561, 569 (2002), citing P. Ballantine & Sons, 141 NLRB 1103, 1107 (1963); accord: Acme Markets, Inc., 328 NLRB 1208 (1999).

<sup>4</sup> Park Manor Care Center, Inc., 305 NLRB 872, 875 (1991).

<sup>5</sup> See, Kalamazoo Paper Box Corp., 136 NLRB 134 (1962). See also, Esco Corp., 298 NLRB 837, 839 (1990).

## **Facts**

The Employer operates assisted living facilities for senior residents. The only facility at issue in this proceeding is the facility located in Rocky River, Ohio. The facility is a residential care facility that does not provide acute medical care for the residents. The facility is divided into two neighborhoods: assisted living for senior residents and “reminiscence” for residents with memory impairment, dementia and/or Alzheimer’s disease.<sup>6</sup> The home has residential facilities for approximately 72 residents in the form of suites or apartments that are furnished by the residents. The home has a central dining area, where servers and care managers take orders and serve the residents in the assisted living neighborhood. In the reminiscence neighborhood, care managers sit with the residents at the dining table and the food is served family style.

The executive director is responsible for the overall operation of the facility. There is a team of coordinators who are responsible for specific areas of the operation. The health care coordinator supervises the wellness nurses. The residential care coordinator supervises the care managers. The maintenance coordinator supervises the housekeepers. The dining services coordinator supervises the food operation and the cooks and servers. The coordinator team and the executive director attend the morning “Stand-Up” meeting at which the directors of each department check in and review the events of the day.<sup>7</sup>

The care managers are available around the clock to provide hands-on care to the residents by assisting with bathing, dressing, eating, light housekeeping, laundry, and serving food. Housekeepers do general cleaning throughout the facility. The cooks prepare the food for the residents and the servers, with occasional assistance from care managers, serve the food.

## **Wellness Nurses**

The Employer employs approximately nine wellness nurses at the home, who are directly supervised by the health care coordinator. All wellness nurses are licensed by the state of Ohio as either an LPN or an RN and are paid on average approximately \$17 per hour.

In contrast, the wage rates for housekeepers range from \$8.25 to \$9.00 per hour; for cooks, from \$9.25 to \$11.00 per hour; and for case managers from \$8.25 to \$11.00 per hour.

The job responsibilities of the wellness nurses are to pass out prescription medication, give routine injections, conduct regular check-ups, including weight, pulse and blood pressure, and to give minor first aid. The wellness nurses maintain and update the medical records and the medical charts of each resident. These records are kept in the

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<sup>6</sup> The reminiscence neighborhood is located on the first floor of the three floor structure and is locked by a keypad lock to maintain safety for the residents of that neighborhood. The assisted living neighborhood is located on the second and third floors of the facility.

<sup>7</sup> The director of community relations and the activities and volunteer coordinator also attend this meeting.

locked Wellness Center.<sup>8</sup> The wellness nurses are present at the facility for the first two shifts of the day, from 7:00 a.m. to 11:00 p.m.

While the record did show occasions when wellness nurses occasionally performed duties coextensive with the duties of the care managers, the Board has found that in nursing home situations involving overlapping duties between nurses' aides and LPN's, it is not required to include the LPNs in a petitioned-for service and maintenance unit.<sup>9</sup>

In **Hillhaven**, the Board found that despite a significant overlap of general duties, based on the LPNs' use of a higher degree of specialized skill to perform specific functions and the fact they were licensed, it was appropriate to exclude the LPNs as technical employees from the bargaining unit.<sup>10</sup> In the instant case, the wellness nurses perform job functions that are separate and distinct from the care managers. The nurses distribute medication, give injections, perform illness checks-ups, perform blood pressure and pulse checks, and chart and maintain the resident medical records. Furthermore, the wellness nurses have separate supervision, substantially higher pay rates and are required by the state of Ohio to be licensed. Accordingly, I find that the wellness nurses are technical employees and, pursuant to the Board's decision in **Hillhaven**, I find that it is appropriate to exclude them from the bargaining unit.

#### **Director of Community Relations and the Activities and Volunteer Coordinator**

The director of community relations job and the activities and volunteer coordinator job share some similarities in job responsibilities that substantially differ from the employees in the petitioned-for service and maintenance unit. Both individuals who hold these positions are compensated at a substantially higher rate than the service and maintenance employees, attend a daily managerial status meeting, perform a manager on call function, have individual office space, have college degrees and report directly to the executive director. For the reasons set forth in detail below, I find that the director of community relations and the activities and volunteer coordinator do not share a sufficient community of interest with the service and maintenance employees and should be excluded from the unit.

The director of community relations position is salaried and the individual holding that position, Lorrie Dakdduk, is responsible for the marketing of the facility in the local community to potential residents.<sup>11</sup> Dakdduk testified that her job responsibilities are sales, business development and some responsibilities within the walls of the facility, including giving tours of the facility with potential residents and families and taking on the manager on duty assignment approximately once every four to

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<sup>8</sup> The only individuals with access to the Wellness Center are the health care coordinator and the wellness nurses.

<sup>9</sup> **Hillhaven Convalescent Center**, 318 NLRB 1017, 1018 (1995).

<sup>10</sup> **318 NLRB at 1018.**

<sup>11</sup> Dakdduk testified that she has a college degree in rhetoric and communications with a minor in sociology and a concentration in psychology.

six weeks, as well as attending the morning managerial or “Stand-Up” meeting.<sup>12</sup> Dakdduk was required to complete many areas of in-house training distinct from the training required by the service and maintenance employees in the petitioned-for unit. Thus, Dakdduk took courses including human resource training, selling to service, financial management, networking, whole home programming, computer basics and leadership development.

Dakdduk testified that she has held the position for approximately five years.<sup>13</sup> To fully perform her job in marketing the facility, she is on the board of directors for the Chamber of Commerce and spends considerable time outside the facility networking and building a referral base. She further testified that she regularly wears a suit to establish a professional appearance.

The activities and volunteer coordinator plans the residents’ social activities including outings such as the theater, the park, exercise, eating in restaurants, picnics, as well as bingo, church services and car rides. The current activities and volunteers coordinator is Melissa DeTray who holds bachelor degrees in both psychology and gerontology. DeTray is paid \$13.50 per hour.

In doing her job, DeTray, who received additional in-house training, including leadership training, human resources, financial management and networking, prepares a monthly schedule of social activities for the residents, as well as leading and attending many of the functions that have been planned. When a new resident arrives, the Activities and Volunteer Coordinator meets with the resident to determine what the resident’s interests are and what types of activities would be appealing. The activities and volunteer coordinator actively recruits and organizes volunteers to assist in the planning and the execution of the planned activities. There are approximately 10 to 20 volunteers at the present time. The regular working hours of the activities and volunteer coordinator are Monday through Friday from 9:00 a.m. to 5:00 p.m., except on Mondays when she works until 7:00 p.m.

The record evidence demonstrates that the activities and volunteer coordinator takes part in many of the planned functions and has limited contact with the dining services employees and the care managers. While the care managers are welcome to join in outings, unless there is a need for additional volunteers, care managers are not paid for their time in attending any outings. The activities and volunteer coordinator is responsible for informing the dining services employees that residents who have signed up for specific events will not be present for meals. Apart from the social coordinating, she is required to attend the “Stand-Up” meetings with the department heads and she works the manager on duty rotation every four to six weeks.

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<sup>12</sup> The manager on duty or manager on call is present at the facility when the executive director is absent. Specifically this occurs on Saturdays, Sundays and holidays. The responsibility is divided among the department heads and the director of community relations and the activities and volunteer coordinator.

<sup>13</sup> Dakdduk has substantial employment history in marketing positions, specifically as an admissions marketer in a nursing home and a hotel sales marketer.

Given the distinctive nature of their work and educational background, and although the record evidence shows that the director of community relations and the activities and volunteer coordinator have contact with the service and maintenance staff, their positions are not interchangeable with that of any other employee in the petitioned-for unit. There are no other employees who can perform the job functions of either the director of community relations or the activities and volunteer coordinator. The contact between the service and maintenance employees and these individuals is limited. The individuals who perform these two job functions are paid substantially more than the employees in the petitioned-for unit, have 9:00 a.m. to 5:00 p.m. working hours, are supervised by the executive director, and perform temporary managerial assignments. Accordingly, in light of the lack of a community of interest with the service and maintenance employees, the director of community relations and the activities and volunteer coordinator are excluded from the unit.<sup>14</sup>

### **The Administrative Assistant and the Concierge**

The administrative assistant and the concierge share a working space in the reception area of the facility. The administrative assistant is responsible for the KRONOS payroll system, the maintenance of employee personnel files, transferring payables and other bills to the executive director and for covering for the concierge in the case of breaks, vacation, sickness or other absence from the facility. The concierge is primarily responsible for greeting visitors and residents and answering the telephone.<sup>15</sup>

The administrative assistant is Sharon Shelley, who sits adjacent to the concierge. The record testimony indicates that the administrative assistant has responsibility to file, maintain and update resident files and employee personnel files, benefit manuals and other human resource type matters. She is responsible to the facility, not the executive director. She transfers bills and invoices to the executive director and maintains and files all business correspondence.

The administrative assistant has contact with the service and maintenance employees in the context of their employment status not their job functions. The administrative assistant is the contact individual for personnel and employee benefit questions or concerns. She has access to payroll records and employee benefit documents and the other materials maintained in employee personnel files. Although the administrative assistant completes some internal facility human resource training, because she has no direct involvement in the care of residents, she is not required to complete any resident care training.

As noted earlier, the concierge greets visitors and residents. She answers the telephone, takes messages for patients and employees, transmits telephone messages to employees, passes out paychecks, collects lunch money from employees and visitors who

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<sup>14</sup> In **New Fairview Hall, 206 NLRB 688, 720 (1973)** the Board excluded a nursing home activities director from a unit of service and maintenance employees on community of interest grounds.

<sup>15</sup> The current concierge is Patricia Lehtinen, who has held the position for approximately four and a half years.

choose to eat at the facility and keeps track of the amount that goes into and out of the safe in a log that is kept in the safe. She has access to the safe where the petty cash and undistributed employee paychecks are kept.<sup>16</sup> The record evidence reflects that on one occasion in 1999, the concierge went on to become a care manager. The concierge also maintains a “power of attorney” list of contact telephone numbers for families or guardians of residents. The record evidence indicates that she works four days a week, including Sundays from approximately 8:00 a.m. to 4:30 p.m. On the days that she is not present, the administrative assistant greets visitors and answers the telephone. There was no evidence to show that the concierge fills in for the administrative assistant in performing those job duties.

The Board has distinguished between business office clericals and other clericals, consistently including the latter in service and maintenance units in hospitals where they have contact with the service and maintenance unit.<sup>17</sup> In the Board's rulemaking proceedings, the Board also recognized the distinction between business office clericals and other types of clericals.<sup>18</sup> The Board has noted that business office clericals perform distinct functions: handling finances and billing, and dealing with Medicare, Medicaid, and other reimbursement systems. As the only individual who files, maintains and updates payables, invoices, billing and other financial documents at the facility, I find that the administrative assistant is a business office clerical who does not share a sufficient community of interest with the service and maintenance employees. While the concierge sits in the same area with the administrative assistant and the administrative assistant fills in for the concierge in her absence, I find that the concierge is not a business office clerical as there is no evidence to show that she performs the same filing, and maintenance of financial documents as the administrative assistant. Accordingly, I find that the concierge shares a sufficient community of interest with the service and maintenance employees and should be included in a unit found to be appropriate.

### **Student-Employee Care Managers**

The Employer has three care managers who are concurrently full-time college students: Leah Bing, Nicole Bing and Maggie Parks. The record evidence reflects that Leah Bing, who is classified as a lead care manager, has worked at the facility approximately seven weeks during the school year and full-time during the summer. Leah Bing performed a 10-week internship through her university from January to March 2004. Nicole Bing, a care manager in the reminiscence neighborhood, has worked full time during school vacations. Maggie Parks is a care manager who works full-time every other weekend at the facility, and throughout all school vacations. All three employees are expected to begin full-time employment at the conclusion of their respective school

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<sup>16</sup> Only the executive director, the administrative assistant and the concierge know the combination to the safe.

<sup>17</sup> Rhode Island Hospital, 313 NLRB 343, 359 (1993); Mercy Hospitals of Sacramento, 217 NLRB 765, 770 (1975); St. Luke's Episcopal Hospital, 222 NLRB 674, 676 (1976); and Duke University, 226 NLRB 470, 470-471 (1976).

<sup>18</sup> 53 FR 33924-33926, reprinted at 284 NLRB 1562-1565.

terms. The record evidence indicates that these three employees do not enjoy employee benefits.<sup>19</sup>

The Petitioner asserts that these three student-employees should be classified as seasonal employees and excluded from the bargaining unit. The Employer submits that the three student-employees have a continuing interest in employment at its facility and have, through their tenure as employees, demonstrated that their work is not sporadic, inconsistent or seasonal. I find that Leah Bing and Maggie Parks have worked consistently and continuously throughout the school year and possess regular part-time status. Nicole Bing, on the other hand, has not worked anytime during the school term outside of vacations. Accordingly, I find that she is a temporary part-time employee and should not be included in the bargaining unit.

The Board has found that the test in determining whether students have the requisite community of interest with other unit employees, the analysis follows the same lines that it normally employs when determining "regular part-time" status.<sup>20</sup> The factors considered are: regularity and continuity of employment; tenure of employment; similarity of work duties; and similarity of wages, benefits, and other working conditions.<sup>21</sup> The Board has also found that where students' employment is shown to be sporadic, temporary, or seasonal in nature, they will be excluded from the unit as temporary or casual employees.<sup>22</sup>

The record evidence demonstrates that all three college students are care managers who make the same wages as the other care managers in the petitioned-for unit. As care managers, they have the same work duties, working conditions and responsibilities as the other care managers. Leah Bing has worked as lead care manager for approximately 20 hours per week from mid-December 2003 through mid-April 2004. Despite the Petitioner's argument that this is insufficient to show a regular pattern of employment, I find that Leah Bing's employment has been regular and continuous, coupled with the evidence showing that she has been employed by the facility since 2000. Maggie Parks' payroll records show that she has consistently worked at the facility every other weekend during the school term and full-time during breaks from the school term since 2002. Parks has averaged approximately 11 to 15 hours per pay period since 2002. I find that she has demonstrated a regular pattern of part-time employment and should therefore be included in the bargaining unit.

The payroll records for Nicole Bing demonstrate that she has worked at the facility only during school vacations, however extended. The Board specifically addressed students who work only during vacation periods in its decision in **Crest Wine and Spirits**, and concluded that such student-employees are temporary employees who

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<sup>19</sup> The employee handbook indicates that in order to be eligible for employee benefits, including health, dental, vision, short and long term disability, 401(k), tuition reimbursement, paid time off, meal discounts, employee referral bonus and employee assistance program, an employee must work at least 20 hours in a week.

<sup>20</sup> 229 NLRB 54, 55 (1977).

<sup>21</sup> **Gourmet Foods, Inc.**, 270 NLRB 578 (1984).

<sup>22</sup> See **Crest Wine and Spirits**, 168 NLRB 754 (1967).



will be excluded from the bargaining unit.<sup>23</sup> I find that she should be excluded from the bargaining unit on the basis that she has not engaged in a regular pattern of employment during the school year.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 880, AFL-CIO, CLC.**

### **LIST OF VOTERS**

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969).** Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility, 315 NLRB 359 (1994).** The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

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<sup>23</sup> **Beverly Manor Nursing Home, 310 NLRB 538 (1993).**

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by June 15, 2004.

Dated at Cleveland, Ohio this 1<sup>st</sup> day of June 2004.

“/s/ [Frederick J. Calatrello].”

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Frederick J. Calatrello  
Regional Director  
National Labor Relations Board  
Region 8